

ESTTA Tracking number: **ESTTA573385**

Filing date: **11/26/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211736
Party	Plaintiff Kittrich Corporation
Correspondence Address	MARK CALKINS KITTRICH CORPORATION 14555 ALONDRA BLVD LA MIRADA, CA 90638 UNITED STATES markc@kittrich.com, kevinr@kittrich.com
Submission	Motion to Strike
Filer's Name	Mark A. Calkins
Filer's e-mail	markc@kittrich.com
Signature	//Mark A. Calkins//
Date	11/26/2013
Attachments	Motion to Strike - 112613.pdf(246671 bytes)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Kittrich Corporation

Opposer,

vs.

Little Twigs, LLC

Applicant.

Opposition No.: 91211736

Mark: LITTLE TWIGS BABY CHILD MAMA

Serial No. 85/659719

Filed: June 23, 2012

Published: July 23, 2013

OPPOSER'S MOTION TO STRIKE APPLICANT'S RESPONSE

Opposer Kittrich Corporation ("Kittrich") hereby moves the Board, pursuant to Fed. R. Civ. P. 12(f) and TBMP § 506, to strike in its entirety the untimely, untitled document filed with the Board by Applicant Little Twigs LLC ("Applicant") on November 19th, 2013 or November 20th, 2013 ("Response"). In support of this Motion, Applicant states the following:

1. Kittrich's Motion is predicated on Applicant's failure, yet again¹, to comply with the Board's Scheduling Order, and applicable rules including Fed. Rule Civ. P. 8(b). Kittrich and Applicant should be able to rely on the expectation that the other will conduct its case and seek to protect its rights, such as they are, according to the rules of this Board and the Federal Rules of Civil Procedure. Applicant has blatantly and repeatedly failed to follow such rules, and has instead relied on its *pro se* status as an excuse for failing to comply with the rules and regulations that govern these proceedings. (Opposer notes that it is representing itself as well.)

2. As a result, Kittrich has been incapable of timely and effectively prosecuting its case, which has prejudiced and continues to prejudice Kittrich, and caused it to incur undue delay, burden and expense. Applicant has failed to appropriately represent itself before this Board after having been provided multiple opportunities to do so.

¹ Applicant's Response was initially due September 2nd, 2013.

1 3. On July 24th, 2013 Kittrich filed its Notice of Opposition, and on that same date
2 the Board set an Answer date of September 2nd, 2013. Concurrent with filing the Notice of
3 Opposition with the Board, Kittrich provided a service copy of the same by first class mail to
4 Applicant's address of record.

5 4. Applicant did not timely file an Answer, and on September 4th, 2013, Kittrich filed
6 a Motion for Default Judgment with the Board. The Motion for Default Judgment is still pending.
7 In an October 7th, 2013 Notice to the Applicant, the Board, after locating Applicant at a new
8 address, extended until November 16th, 2013 the time for the Applicant to file an Answer to the
9 Notice of Opposition. The Board's October 7th Notice reads in pertinent part:

10 Notice is hereby given that unless the applicant listed herein, its
11 assigns or legal representatives shall enter an appearance, answer or
12 other response to the petition within the timeframe allowed, the
 opposition may proceed as in the case of default.

13 5. On November 19th, 2013 or November 20th, 2013, the Response, an untitled paper
14 purported to be provided by the Applicant, was received by the Board. The Response appears to
15 have been dated "November 16th, 2012" by the Applicant, bears a USPTO date of receipt stamp of
16 11-19-2013, and is listed on the US Patent and Trademark Office website with a date of
17 11/20/2013. There is no indication that the Response was delivered by "Express Mail Post Office
18 to Addressee" service of the United States Postal Service under 37 C.F.R. § 1.10, nor is there any
19 indication that the Response was sent by facsimile or provided with a certification in compliance
20 with 37 C.F.R. § 1.6.

21 **I. Applicant's Response Fails to Comply with FRCP 8(b)**

22 6. Kittrich's Notice of Opposition, filed *pro se* by Kittrich, was detailed and specific,
23 and provided Applicant more than ample notice of the grounds on which this opposition is based.
24 Kittrich's Notice of Opposition includes 24 numbered paragraphs of the facts and allegations,
25 plus a prayer for relief. In an apparent attempt to address Kittrich's Notice, Applicant filed its
26 (untimely) less than 1 full page, 7 paragraph "Response," which fails to respond, admit or deny
28 any of Kittrich's allegations or prayers for relief.

1 7. Applicant's Response clearly fails to comply with Fed. R. Civ. P. 8(b)(1):

2 "[I]n responding to a pleading, a party must state in short and plain
3 terms its defenses to each claim asserted against it; and...admit or
4 deny the allegations asserted against it by an opposing party."

5 8. Applicant's Response uses the terms "not just", "disingenuous", "frivolous
6 nonsense" and other words to describe the Notice, but never once makes anything close to a
7 blanket denial or admission of Kittrich's allegations, let alone a more specific denial or admission
8 of even one of those allegations.² All of the numbered paragraphs of the Response violates
9 applicable procedural law, and should be stricken.

10 9. To the extent that the Response purports to set forth any affirmative defenses or
11 counterclaims, the same should be stricken as lacking any amount of particularity that would be
12 required to provide the minimum amount of notice required under Fed. R. Civ. P. 8.

13 10. In the alternative, if the Board determines Fed. R. Civ. P. 8(b)(1) does not compel
14 the Response to be stricken, Kittrich requests that the Board rule the allegations of the Notice
15 admitted pursuant to Federal Rule of Civil Procedure 8(b)(6) ("An allegation -- other than one
16 relating to the amount of damages -- is admitted if a responsive pleading is required and the
17 allegation is not denied.")

18 11. In addition, Fed. R. Civ. P. 12(f) allows the Board, on its own or upon motion, to
19 strike from a pleading an insufficient defense or any redundant, immaterial, impertinent or
20 scandalous matter. At a minimum, paragraphs numbered 2, 5, 6 and 7 of the Response should be
21 stricken as immaterial and impertinent to the matters at issue in this Opposition.

22
23
24
25

26 ² In a tortured construction Applicant's own allegations could possibly be construed as veiled denials of certain of
27 Kittrich's allegations, but Kittrich should not be tasked with sifting through Applicant's blatantly incomplete
28 Response, interpreting its allegations against the Notice, and attempting to divine which of Kittrich's allegations might
29 have been admitted or denied. Kittrich deserves to understand where it stands in this proceeding under Board rules.
 See TBMP 312.03 and 318.02(b) ("The primary purpose of pleadings, under the Federal Rules of Civil Procedure, is
 to give fair notice of the claims or defenses asserted.")

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
8
9

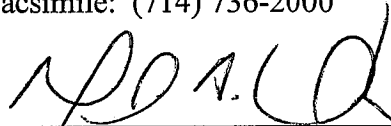
10 12. Applicant's Response is untimely as it was filed at least 3 days after the due date,
11 and therefore should be rejected by the Board on this basis.

20 WHEREFORE, Kittrich Corporation respectfully requests that the Board issue an order
21 striking the Applicant's Response in its entirety due to its untimely filing, and its failure to
22 comply with applicable rules, including Fed. R. Civ. P. 8(b) and Fed. R. Civ. P. 12(f). Kittrich
23 further requests that the Board sustain Kittrich's pending Motion for Default Judgment.

1 DATED: November 26th, 2013

2
3 Respectfully submitted,

4
5 MARK A. CALKINS
6 KITTRICH CORPORATION
7 14555 Alondra Blvd.
8 La Mirada, CA 90638
9 Telephone: (714) 736-1044
10 Facsimile: (714) 736-2000

11 

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
MARK A. CALKINS
Vice President
Kittrich Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO STRIKE APPLICANT'S RESPONSE has been served via email and First Class Mail on Applicant at the address below, on this 26th day of November, 2013:

LISA JULIAN
LITTLE TWIGS LLC
1317 CABRILLO AVE
VENICE, CA 90291
UNITED STATES

Dated: November 26th, 2013

By:


Mark A. Calkins